SUPREME COURT OF NOVA SCOTIA

Citation: *Polycorp Properties Inc.* v *Halifax (Regional Municipality),* 2011 NSSC 241

Date: 20110620
Docket: Hfx No 327941
Hfx No 335820
Registry: Halifax

Between:

Polycorp Properties Incorporated

Applicant

-and-

Halifax Regional Municipality

Respondent

and

Registrar General Land Titles (Province of Nova Scotia)

Intervenor

And Between:

Halifax Regional Municipality

Applicant

-and-

Registrar General Land Titles (Province of Nova Scotia), ***Causeway Bay 20 Co. Ltd.***, ***DDP Brunswick Limited***, ***DDP Ocean Towers Limited*** and ***Polycorp Properties Incorporated***

Respondents

-and-

Ruth Bailey

Intervenor

Judge: The Honourable Justice Gregory M. Warner

Heard: May 16, 17 and 18, 2011 at Halifax, Nova Scotia

Written Decision: June 20, 2011

Counsel:

Robert G. Grant QC and **Matthew Pierce**, counsel for **Polycorp Properties Limited** (applicant in first application; respondent in second application)

Matthew G. Williams, counsel for Halifax Regional Municipality (respondent in first application; applicant in second application)

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Michael J. Wood QC and **Jason G. Cooke,** counsel for **Ruth Bailey**

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Devin Maxwell, counsel for **Causeway Bay 20 Co. Ltd.**

By the Court:

A requisite of the 'rule of law', whatever definition one adopts, is that the law is at least visible and certain, and not subject to the machinations of government.

Part I: The Applications

[1] On April 23, 2010, Polycorp Properties Incorporated filed an Application in Chambers ("First Application") for a declaration that its development rights on a vacant lot ("Property") situate on Barrington Street in Halifax are governed solely by Halifax Regional Municipality's ("HRM") *Land Use Bylaw* ("*LUB*") and is not affected by any prior unrecorded agreements or authorizations which HRM says restrict development on the Property. Alternatively, it argues that HRM is estopped from relying upon any purported development restrictions.

[2] On August 30, 2010, HRM gave notice of, and on September 10, 2010 filed an Application in Court ("Second Application") against Registrar General Land Titles, Polycorp, two predecessors in title to Polycorp and one adjacent property owner, for:

(1) a declaration that the consolidation of two lots to create the Property, pursuant to s. 268(a) of the *Municipal Government Act ("MGA")* and the *Registry Act*, was void because the Statutory Declaration filed to effect the consolidation was inadequate and incorrect, and

(2) a determination that there were omissions in the legal description of the Property upon migration to the registry of deeds under the *Land Registration Act* ("*LRA*") and a direction to the Registrar General Land Titles, to correct the parcel description for the Property pursuant to *LRA* s. 35.

[3] The Registrar General Land Titles was given intervenor status in the First Application. The lawyer who carried out the consolidation of two lots and its migration under the *LRA* was given intervenor status in the Second Application.

Part II: Factual Overview

[4] In April 2009 Polycorp, a residential developer, purchased the Property. The lot is (and was at all material times) a vacant lot and zoned R3 under the *LUB*. On November 13, 2009, it applied for a development permit to construct a 62-unit condo complex on the Property. The proposed condo complex is a permitted use, as of right, in the R3 zone.

[5] On February 26, 2010, HRM refused to issue a development permit on the basis that the permitted use was open recreation space, dedicated to the housing units constructed in the early 1970's as the Barrington Street Housing Project.

[6] The Barrington Street Housing project was carried out pursuant to an "**Agreement to Convey**" dated November 20, 1970, between, on the one hand, the City of Halifax and Central Mortgage and Housing Corporation ("CMHC") and, on the other hand, Barrington Developments Limited ("BDL"). The agreement provided for the development of a rental

housing project pursuant to Part III of the *National Housing Act* ("*NHA*") on lands which included the Property.

[7] HRM submits that the **Agreement to Convey** created enforceable restrictions respecting the development and use of the project lands described in the **Agreement to Convey** on BDL and any future owners of the lands. The lands were acquired by the City of Halifax and CMHC in or after 1964 as part of an 'urban renewal scheme'. The project lands were conveyed to BDL by several deeds between 1970 and 1973 in accordance with the terms of the **Agreement to Convey**.

[8] The **Agreement to Convey** was never registered, recorded or filed under the *Registry Act* at the registry of deeds, or under the *Land Registration Act* at the land registration office.

[9] HRM and Polycorp disagree as to the proper interpretation, effect, and status of the **Agreement to Convey**.

[10] Pursuant to HRM's advice in its February 26, 2010 letter refusing to issue a development permit, Polycorp appealed HRM's refusal to the Nova Scotia Utility and Review Board on March 11, 2010. HRM then objected to the jurisdiction of the URB to determine whether an unrecorded agreement affected the permissible uses of the Property.

[11] Polycorp and HRM agreed to adjourn the URB appeal while Polycorp brought the First Application. Polycorp's application was scheduled to be heard on September 9 and 10, 2010.

[12] On August 19, 2010, HRM sought a stay of the hearing of the First Application for the purpose of filing the Second Application and having both heard together. The stay was granted. The Second Application was filed. The hearing was adjourned to January 2011. On the eve of the scheduled hearing, it was rescheduled for four days commencing May 16, 2011.

[13] In respect of these applications, ten affidavits and thirteen briefs have been filed, and eight discovery examinations have been conducted (including three in Toronto). Some affiants were cross-examined at the hearing.

Part III: Polycorp's Application (First Application)

[14] Polycorp seeks a declaration that its development rights are governed only by the *LUB* and are not affected by any prior, unrecorded agreements that led to the development on lands that included the Property.

[15] It is not contested that, subject to the correction of some minor deficiencies in the architect's plans filed with Polycorp's application for a development permit (outlined in HRM's letter of February 12, 2010 and remedied by Polycorp's response on March 10, 2010), the proposed development of a 62-unit condo building on the property would meet the requirements of the R3 zone and other planning regulations. But for HRM's claim respecting the development restrictions arising out of the 1970 **Agreement to Convey**, Polycorp's proposed use would be a

permissible use, as of right, under the *LUB* and Polycorp would be entitled to a development permit.

[16] The central issue is whether the November 20, 1970 **Agreement to Convey** imposed development restrictions on the Property that entitle HRM to refuse Polycorp a development permit.

[17] A secondary issue is whether HRM is estopped from refusing a development permit because of a Zoning Confirmation Letter it issued to Polycorp on February 16, 2009, which letter did not disclose the development restrictions which caused it to refuse the development permit.

[18] The material facts are not seriously in dispute or difficult to ascertain. However, their meaning and the application of the law to them is disputed.

[19] About 1964, the City of Halifax determined that a large tract of land, generally bounded by Barrington, North and Gottingen Streets as well as by Portland Place, was a blighted or substandard residential area, and declared it to be a redevelopment area. With approval from the Province, it entered into an agreement on May 7, 1964 with the Federal Government and CMHC to acquire, clear, replan and redevelop the area within a ten-year period.

[20] The terms of the 1964 Agreement clearly constitute an urban renewal scheme under Part III "Urban Renewal" of the *NHA*, as it then existed.

[21] Section 405 of the *Halifax City Charter*, as it existed at that time (see the *Consolidation of the Halifax City Charter*, S.N.S. 1963, c. 52) authorized the City to effect a redevelopment scheme according to any method or plan approved or authorized under *NHA*. The section reads:

> 405 The Council may by resolution:
>
> (a) undertake, carry to completion, maintain and operate housing schemes, land assembly schemes, redevelopment schemes, housing redevelopment schemes and Federal-Provincial projects according to any method or plan approved or authorized under the terms of the National Housing Act, 1954 (Canada) and act as a lending institution as defined in such Act with all the powers, rights and duties and remedies necessary or incidental thereto;
>
> (b) [not relevant]
>
> (c) undertake, carry to completion, maintain and operate housing schemes and redevelopment schemes in any case where, by any Act of the Parliament of Canada or any statute of the Province, provision is made for assistance to municipalities in the undertaking of such schemes and enter into such agreements with the Government of Canada, Central Mortgage and Housing Corporation or the Province or with any other agency as may be required by the terms of any such Act or statute in relation to any such scheme;
>
> (d) do any act or thing that may be required to be done in order to obtain for the City any benefits or advantages that by the terms of any Act of the

Parliament of Canada or any statute of the Province are rendered available to municipalities as a means of assistance in formulating, completing and operating housing schemes, redevelopment schemes and similar projects;

(e) undertake, maintain and operate municipal housing schemes upon such terms, conditions, rules and regulations as the Council may by resolution determine.

[22] The 1964 Agreement contains these material terms:

4. Redevelopment Plan

Within eighteen months from the date hereof the City will prepare or cause to be prepared to the satisfaction of the City and the Corporation [CMHC], and consistent with the official community plan of the City of Halifax, a redevelopment plan for the lands (hereinafter referred to as the "redevelopment plan") which shall include but shall not be limited to:

(a) a plan showing the location and width of new streets and streets which will remain and a general description of the proposed improvements of existing streets, the location and width of all sidewalks, walkways and lanes. The sizes of proposed public areas as well as an indication of the proposed services for the lands shall be included on the plan;

(b) a plan showing the location of existing buildings which are deemed appropriate for retention;

(c) the type of buildings and all lands uses proposed for the whole of the lands as redeveloped;

(d) the extent and method of control by way of bylaw, condition of sale, lease, restrictive covenant or combination thereof, which will be applied to ensure that the lands as redeveloped will be used in accordance with the redevelopment plan; [Court's emphasis]

(e) the period within which each phase of redevelopment plan is scheduled for implementation.

. . .

6. Disposition of the Lands

. . .

(2) The City, in implementing the redevelopment scheme, will attempt to effect such sale, lease or other disposition of the lands as shall be consistent with the said redevelopment scheme provided that any sale, lease or other similar

> disposition and the price, terms and other conditions thereof shall be established to the mutual satisfaction of the City and the Corporation.

[23] On June 18, 1969, by motion, City Council called for proposals for redevelopment of an area generally bounded on the east by Barrington Street; north by Gerrish Street; on the west, in part, by Brunswick Street itself, and, in part, by residences and St. Patrick's church on the east side of Brunswick Street, and, on the south by the rear of properties on the north side of Cornwallis Street.

[24] The City approved a proposal submitted by Dineen Construction in response to the City's call. It appears that the Federal Government and CMHC held up Dineen's proposal because it did not fit within CMHC's rules and regulations for redevelopment. On July 16, 1970, City Council, citing a worsening housing crisis for low-income families, resolved to press the Federal Government to approve the project.

[25] On November 20, 1970, the City and CMHC, as partners, executed the **Agreement to Convey** with BDL, a company incorporated by Dineen Construction for this project. It is this agreement that HRM says created the development restrictions on the project lands, which project lands include the Property.

[26] Interpretation of the **Agreement to Convey**, in the context of the relevant legislation, is crucial to the determination of whether, at the time of the agreement was entered, it was intended to constitute an enforceable restriction on the development and use of the lands, irrespective of future changes in ownership, as opposed to an agreement between the City of Halifax/CMHC and BDL, discharged upon completion of the development by BDL in accordance with the terms of the agreement.

[27] If it is the type of planning and development tool called a 'development agreement', a site-specific alternative to development as of right in accordance to the restrictions contained in zones created under *LUB*s, it could constitute an impediment to any development or redevelopment contrary to the provisions of the agreement until the agreement is released or amended by HRM. If the **Agreement to Convey** is simply an agreement between the City of Halifax/CMHC and BDL for development of the project area in accordance with the proposal, it would terminate upon the completion of the project in accordance with its terms.

Submissions

[28] Polycorp submits that, to be enforceable against subsequent purchasers, the Agreement had to have been recorded against the title to the Property at the registry of deeds or land registration office. It never was. Absent any recording, Polycorp's development rights are governed by the *LUB*, in accordance with s. 261 of the *HRM Charter*.

[29] HRM submits that rather than being restricted by a formal development agreement, the Property is restricted because the project was authorized under s. 538A of the *City Charter*, which authorization designated the Property as open recreation space for the Barrington Street Housing Project.

[30] Section 538A came into effect as an amendment to the *City Charter* by SNS 1969, c. 91, s. 53. It reads:

> 538A When the building inspector is unable to issue a building permit by reason that the proposed construction does not meet the requirements of the Halifax Zoning Bylaw, if
>
> a) the parcel or parcels of land upon which the construction is being located is in excess of five acres, and
>
> b) the proposed construction is consistent with good planning principles,
>
> the Council may authorize the erection of the proposed construction and issue a permit therefor.

[31] Paul Dunphy, HRM's Director of Community Development, states that:

a) the legislative amendment creating s. 538A was sought by the City to allow City Council to approve projects which did not conform to its bylaws;

b) the **Agreement to Convey** was made pursuant to s. 538A; and,

c) it was a condition of the approval of BDL's proposal, and a pre-requisite to the conveyance of the lots (two of which became the Property after consolidation) in Phase III of the project that those lots (the Property) would become and remain open recreation space.

[32] HRM's argument goes like this:

a) First, the City's zoning bylaw for the area of the Barrington Street Housing Project at that time (R-3) provided for a maximum permitted density that was less than BDL's proposal. The zoning bylaw required 120 square feet of open space, of which ten square feet had to be landscaped, for each person in a two or more bedroom unit, and 80 square feet (of which 70 square feet had to be landscaped) for each person in a unit containing less than two bedrooms.

b) Second, the BDL proposal, described in a staff report dated January 21, 1970, called for 450 units and recreational facilities to be developed in three phases. The number of units exceeded the maximum allowable density in the zoning bylaw for those lands. Only by an authorization pursuant to s. 538A of the *City Charter* could the BDL proposal be approved. While acknowledging that neither of two Council resolutions respecting the project, nor the **Agreement to Convey,** refer to s. 538A, it submits that, in effect, the July 16, 1970, Council resolution requesting the Federal Minister of Housing or CMHC "to initiate with haste the project" (Dunphy, Tab E) and the July 12, 1973, Council resolution formally approving Phase III, constituted authorization of the BDL proposal and development contained in the **Agreement to Convey**, pursuant to s. 538A.

c) Third, support for their submission that the open recreational space was essential to the approval of the project is found in other documents. The **Agreement to Convey** outlines

how the project would proceed; one recital in the Agreement referred to "Sketch Plans and Drawings showing the layout to be used to accommodate 450 housing units". BDL's original Proposal Plan shows the Property (Parcels 3e and 3f) as a play area, tennis/skating area and parking lot. Furthermore, the **Agreement to Convey** required that the project proceed in accordance with the detailed plans that would conform to the original "Outline Scheme", and be approved by the City; thus, the detailed plans and documents prepared after the Agreement was entered became incorporated by reference as terms of the **Agreement to Convey**.

d) Fourth, the structures built by BDL did not conform to the zoning bylaw at the time they were constructed. They were deemed acceptable because of the open recreational space included in the original Proposal Plan, and in the Landscaping Plan, dated August 1973, filed with the City in respect of Phase III (Dunphy, Tab I).

[33] HRM acknowledges that the **Agreement to Convey** nor BDL's Proposal Plan nor the Landscaping Plan, dated August 1973, which shows the Property as open recreational space, were ever recorded or filed at the registry of deeds Office. HRM notes that a surveyed subdivision plan was filed at the Registry of Deeds Office as Plan #TT-14-19013, showing the parcels conveyed by the City to BDL (on that plan the Property is identified as Parcels 3e and 3f). That plan contains the title phrase: 'Schedule A Project Area, Office of the City Engineer, February 1971', and, in a box titled 'Note': 'This Plan was used for Schedule A in Agreement for Brunswick Towers'.

[34] HRM submits that these identifiers on the Plan filed at the Registry gave prospective purchasers of the property notice that the Property was subject to development restrictions, one of which was that the Property was to remain open recreation space.

[35] HRM further submits that the references to the **Agreement to Convey** in the first recital in the conveyances of the Property from the City to BDL on October 12, 1973, and to the grantee: "having complied with the terms of the said Agreement . . ." in the second recital, gave additional notice to prospective purchasers of the development restrictions.

[36] Polycorp submits that HRM must issue a development permit if the development meets the requirements of the *LUB*, the terms of a development agreement or an approved site plan pursuant to s. 261(1) of the *HRM Charter*.

[37] Where a proposed development does not comply with the *LUB*, a developer and HRM may enter into a development agreement that supersedes the *LUB* in accordance with ss. 240 to 245 of the *HRM Charter*. An important condition of any such agreement is that it must be filed in the land registration office (s. 243(3)).

[38] Neither party represents that the development involves approval of a site-plan; therefore, ss. 246 and 247 of *HRM Charter* are not relevant to this application.

[39] Polycorp submits that the issue in its application is simple: Even if the **Agreement to Convey** was a development agreement (which it denies) it was never recorded or filed at the registry, a statutory precondition to the effectiveness and enforceability of any development restrictions contained in it.

[40] In answer to HRM's submission that in 1970 there was no requirement for the recording or filing of an agreement authorized pursuant to s. 538A of the *City Charter*, Polycorp responds with three submissions:

i. S. 538A of the *City Charter* was repealed in 1995. Any silence (or absence) of a requirement in the repealed *City Charter* to record or file a development agreement for it to be effective, cannot save HRM from the current statutory requirement to file.

ii. Polycorp's application for a development permit conforms to the current zoning bylaw for the Property. Section 538A was permissive, not restrictive. It was not intended to restrict development that conforms to the current zoning bylaw. Section 538A was enabling legislation that permitted a development that would not otherwise comply with zoning bylaw that existed at that time. Said differently, authorization pursuant to s. 538A may have been necessary for the development of the BDL proposal in 1970 because the density exceeded the existing zoning bylaw for the lands, but, on its face, s. 538A was never intended to preclude future developments that did comply with zoning or land use regulations.

iii. An unrecorded interest in respect of land is ineffective against a purchaser for value without notice. So says s. 18 of the *Registry Act*, RSNS 1989, c. 382 (s. 17 of the *Registry Act*, RSNS 1967, c. 265). This precept is repeated in s. 20 of *LRA* - a parcel register is a complete statement of all interests affecting the parcel. For an s. 538A authorization to be effective as a restriction on future owners, it must be recorded to give notice to future purchasers.

[41] On this third submission, Polycorp cites Bryson J. (as he then was) in *CitiFinancial Canada East Corp v Touchie*, 2010 NSSC 149, at para. 34. It claims to be "equity's darling", and argues that the registry system would be effectively worthless if the City's claimed encumbrance, required by current legislation to be filed to be effective, could bind the lands and future owners who had no way of knowing of them.

[42] Polycorp notes that another 1969 statute, the *Planning Act*, c. 16, expressly provided for development agreements (ss. 33 and 34). Section 34(2) required that a copy of the agreement be filed in the office of the registry of deeds where the land is situate "and thereupon the obligations thereof shall be binding on the owner and upon any subsequent owner until discharged by the municipality". This planning legislation, enacted at the same time as the *City Charter* amendment creating s. 538A, reinforces its interpretation of the legislative intent as: ". . . to enable development not consistent with the then existing community plan and not to restrict future development as by a development agreement enabled by reason of sections 33 and 34 of the 1969 *Planning Act*."

[43] Polycorp notes that, in discovery, Paul Dunphy identified one other authorization made by the City under s. 538A of the *City Charter*. On cross-examination, he was shown an Agreement between the City and Durham Leasehold dated March 31, 1978. That Agreement specifically referenced s. 538A of the *City Charter*. That Agreement was recorded at the Registry of Deeds Office for Halifax. In contrast, neither the **Agreement to Convey** nor any Council resolutions refer to s. 538A or any future restrictions on development and the **Agreement to Convey** was not recorded.

[44] Polycorp submits that neither the words on the Plan of Survey TT-14-19013 (filed at the Registry of Deeds) nor the preamble to the Deeds of Conveyance from the City to BDL, give notice of any restrictions on development on the Property.

[45] Polycorp notes that, even if it had all the unrecorded documents relating to the **Agreement to Convey** and s. 538A authorization, there would have been not basis for it to have concluded that the Property was encumbered as HRM suggests.

Analysis

[46] The call for proposals that resulted in the **Agreement to Convey**, entered into between the City and CMHC on one part and BDL on the other part, was an agreement to redevelop a blighted residential area of Halifax. It was made pursuant to the 1964 Agreement between the City, the Federal Government and CMHC under Part III of *NHA*, and authorized by s. 405 of the *City Charter*.

[47] While neither the Agreement to Convey nor any resolution of City Council expressly states that the approval of the BDL (Dineen) Proposal was made pursuant s. 538A of the *City Charter*, the BDL Proposal contained a higher density than the R3 zone authorized at that time. The only authority that the City had to approve the proposal was pursuant to s. 538A. For that reason, I find that the **Agreement to Convey** was authorized pursuant to s. 538A of the *City Charter*.

[48] This finding gives rise to two questions:

1) As a matter of statutory interpretation, does authorization of the **Agreement to Convey** pursuant to s. 538A mean that future use, development or redevelopment of the project lands, including the Property, is restricted to the proposal contained in the Agreement?

2) If not, as a matter of contract interpretation, does the **Agreement to Convey** restrict the future use, development or redevelopment of the project lands, including the Property?

[49] Nothing in s. 538A describes an intention to restrict future development. On its face, that is, reading the words in their grammatical and ordinary sense, it simply authorizes issuance of a building permit for proposed construction that does not meet the requirements of the then-current zoning bylaw so long as the proposed construction is consistent with good planning principles. Nothing in the language of s. 538A hints at a restriction on the future use, development or redevelopment of the lands, especially in circumstances where a future use or development would conform to the land use bylaws applicable to the lands at the time of the proposed new use or development.

[50] Interpreting the words of the section in their ordinary and grammatical sense is not enough. The modern approach requires that the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament. *Cape Breton Regional Municipality v. Nova Scotia*, 2009 NSCA 44, para. 36-42, recently endorsed in *Coates v. CDHA*, 2011 NSCA 4, para. 36. The

analysis may be carried out by answering three questions: What is the meaning of the text? What did the legislature intend? What are the consequences of adopting a proposed interpretation?

[51] In paragraph 49 I briefly answered the first question. The words of the text simply authorize issuance of a building permit for construction that does not conform to the then-existing bylaw but which is consistent with good planning principles. It is enabling legislation, not restrictive. The wording is not at all similar to the current *HRM Charter* ss.240-245, or *MGA* ss. 225-230, or the 1969 *Planning Act* ss.33-34, all of which enable development agreements that do restrict use and development of lands until released or amended by the municipality.

[52] What did the legislature intend? The *City Charter*, as it then existed, contains no object clauses or preambles. The *City Charter* itself has evolved over more than a century. Section 538A appears to be the first provision to enable non-compliance with a zoning bylaw (later renamed *LUB*) since town planning schemes (the term used in the 1915 *Town Planning Act*, later renamed official town plans (1939), then municipal development plans (1969), then municipal planning strategies (1989)) were legislated.

[53] Part XVII – Planning and Development Interpretation (ss. 530-542) of the *City Charter*, as it then existed, adds little. Section 539 authorized the City to make ordinances providing for development permits and prescribing the terms and conditions upon which permits may be issued or withheld. There was no evidence in this litigation of an ordinance enacted pursuant to s. 539 that would govern or impact on the project lands.

[54] It is relevant to the inquiry into the legislative intent that at the same time as the *City Charter* was being amended by the addition of s.538A, the new *Planning Act*, which dealt with the same subject matter (but in respect of the rest of the Province), specifically provided in ss.33-34 for development agreements, that, when executed by the parties and filed at the registry of deeds, became effective restrictions on the future use and development of lands. This fact tends to support Polycorp's submission that the intent of s.538A was to be enabling and not restrictive.

[55] What are the consequences of adopting the proposed interpretations? If the court accepts HRM's proposed interpretation, lands and their future owners would be subject to significant invisible encumbrances or restrictions, contrary to all other statutory development agreements – which agreements are not effective until filed at the Registry of Deeds. In this case, even an inquiry of HRM's Planning and Development department – for example, by purchasing a zoning confirmation letter, would not have uncovered the encumbrance or restriction. In this case there were "no records on file" respecting the authorized (legal) use of the Property, and none were found until long after this litigation was commenced. Interpreting Section 538A as HRM proposes would be inequitable and incongruent with commercial reality; real properties would be subject to vague and invisible encumbrances going to the root of their utility and value.

[56] Two texts provide useful context respecting the evolution of development restrictions in Canada, both in contract and common law (restrictive covenants) and by legislation. *Canadian Law of Planning and Zoning*, by Ian Mac F. Rogers, Q.C., and Alison Butler Scott, Q.C., 2nd edition (Toronto: Carswell, 2009, looseleaf to rel.4 in 2011), c. 5, provides a useful overview of the statutory authority for, and purpose, scope, subject matter, and enforceability of development agreements in the context of zoning or law use bylaws, and planning regulation generally.

Canadian Municipal and Planning Law, 2nd edition ((Toronto: Carswell, 2004) by Stanley M. Makuch, Neil Craik, and Signe B. Leisk, especially c. 8, provides the historic context in common law and legislation, and the rationale of different development control techniques.

[57] Currently, development agreements are most often entered into pursuant to provisions in planning legislation. In Nova Scotia, the first reference to development agreements appears in s. 34 of the 1969 *Planning Act*. No statutory authority for development agreements exists in the first *Town Planning Act*, S.N.S. 1915, c. 3, the 1923 Revised Statutes (c. 98), the 1939 Consolidation (c. 8), or the 1967 *Revised Statutes* (c. 292); nor is any apparent in the *City Charter* until after 1969.

[58] Development agreements can serve several purposes. One can be the implementation of a use or development that is otherwise not in accord with a zoning or land use bylaw.

[59] There is no evidence in this litigation that any other statutory authority, that would restrict development by the equivalent of the modern day 'development agreement' or 'site-plan approval', existed in 1970, or was the basis for the **Agreement to Convey**.

[60] I find that s. 538A is enabling, not restrictive, legislation. Authorization of the erection of a proposed construction and issuance of a building permit pursuant to s. 538A does not create a restriction or encumbrance respecting any future use or development that would comply with zoning or land use bylaws. Section 538A is not the equivalent of ss. 33-34 of the 1969 *Planning Act*, ss. 240-245 of the *HRM Charter*, or ss.225-231 of the *MGA*.

[61] As a matter of contract interpretation, did the **Agreement to Convey** purport to restrict future use and development or redevelopment of the project lands?

[62] In asking this question, I assume that, even if s.538A cannot be interpreted as creating future restrictions, parties may contract with each other so as to create future restrictions. As noted above, Part III *NHA* (especially the definition of an 'urban renewal scheme') and s. 405 *City Charter* authorized the undertaking, and carrying to completion, of urban renewal schemes using 'any method or plan approved or authorized' under *NHA*.

[63] Reading the **Agreement to Convey** as a whole, in the context of *NHA*, the 1964 Agreement (ss. 4 and 6), the Deeds of Conveyance and the other documents tendered in this litigation, I conclude that the intention of the City in 1970 was to redevelop a blighted area and not to restrict future development. Because BDL's Proposal (450 residential units in 1970) exceeded the permitted density in the R3 zone at that time, the City could not authorize the development, other than pursuant to the newly enacted s. 538A. Nothing in the agreement expressly, or by reasonable inference, imposes restrictions or encumbrances on the future use and development of the lands themselves, nor on any owner of the lands, after the terms of the Agreement had been fulfilled.

[64] The authority for CMHC to enter into urban renewal schemes (*NHA* Part III), and for the City to undertake, carry to completion, maintain and operate housing and redevelopment schemes in conjunction with CMHC (*City Charter*, s. 405), expressly provided that they could direct and control the use and development of the lands by whatever methods, within the legislative framework, they chose. Sections 4(d) and 6(2) of the 1964 Agreement authorize

'conditions of sale' as a method of control. The legislation did not mandate, or create a presumption, that such controls would restrict future development, or constitute planning controls of the sort now described as 'development agreements' and 'site-plan approvals'.

[65] It is clear and unambiguous that the method the City and CMHC choose to ensure that BDL carried out the Dineen Proposal for the Barrington Street Housing Project in the manner acceptable to the City and to CMHC was: to obtain a performance deposit, to obtain and approve each phase of the development before construction on the basis detailed plans and specifications (and to issue building/development permits after approval of each phase), to convey the lands to BDL by a series of deeds only as the terms of the **Agreement to Convey** were satisfied by BDL, and to return the security deposit and release performance deposits to BDL in accordance with s. 25 of the **Agreement to Convey** when the project was fully completed.

[66] The scheme of the Agreement is clear. It was the City who divided the lands into eight parcels, not the subsequent owners. It was the City who conveyed the lands in parcels as BDL complied with the terms of the **Agreement to Convey**.

[67] At each phase of the project, BDL submitted detailed plans and specifications, for which it received approval and building/development permits (Dunphy, Tab G). When it commenced construction of approved plans and specifications, it received title to the lands. When BDL completed all phases, its performance deposit was returned to it.

[68] The recitals on each of the Deeds of Conveyance confirm that the intent of the City was to control the development of the lands, not by recorded development restrictions in the nature of a 'development agreement', but rather by conveying the land only when the terms of the Agreement had been complied with, and returning BDL's performance deposit when it had fulfilled the terms of the Agreement. One recital noted that the **Agreement to Convey** was the agreement by which the conveyance was made; and the other recital stated that BDL, 'having complied with the terms of the agreement', has now requested that the City convey the land.

[69] There is no express provision in the **Agreement to Convey**, the conveyances, the Council resolutions, or any other document, that development restrictions would encumber the project lands and future owners. It is not reasonable to imply restrictions.

[70] Even in 1969, the *Planning Act* expressly authorized development by development agreement. The legislation made development agreements effective only when filed by the municipality at the registry of deeds.

[71] If the **Agreement to Convey** was intended to be a development agreement of the kind that would be binding not only on the parties to the agreement but upon the lands and future owners, it would have had to have been recordable, a prerequisite for which was an attestation clause. The Agreement contains no attestation clause.

[72] If the **Agreement to Convey** was intended to be binding not only on the parties themselves but upon the lands and any future owners, the Agreement would have contained the usual provision that the Agreement 'was binding upon the parties, their successors and assigns'. This Agreement contains no such clause.

[73] In summary, it is clear that the City sought to redevelop a blighted residential area. It, with the approval of the Province and in conjunction with CMHC, pursuant to *NHA*, sought and obtained a development proposal. BDL did what it proposed and, at each phase, received building/development permits and a Deed of Conveyance. When the project was completed, the Agreement ended. Nothing in the Agreement, expressly or by reasonable inference, provided that the Agreement would survive the completion of the redevelopment project, or that it was intended to bind successors and assigns of BDL, or the lands, until released or discharged.

[74] The City's own conduct since the **Agreement to Convey** clearly demonstrates that the City treated the Agreement, authorized under s. 538A (which section ceased to exist when in 1995 the *City Charter* was revoked and replaced with a new *HRM Charter*), as a redevelopment scheme under the *NHA* and not as a 'development agreement' like those authorized by ss. 33 and 34 of the 1969 *Planning Act* or ss. 240 to 245 of the *HRM Charter*.

[75] In the memorandum attached to the **Agreement to Convey** dated November 25, 1971(Dunphy, Tab F), the City's solicitor simply asked the Clerk to put it in safe keeping. If it was intended that this document would form a restriction on future development of the lands, the City's solicitor would have taken more steps than simply asking that the Agreement be put in safe keeping.

[76] It appears that the **Agreement to Convey** was not filed with or in the possession of HRM's Planning and Development Department. It was several months after this litigation was commenced (and long after HRM refused to issue Polycorp a development permit) that it was 'found'. When zoning confirmation letters were issued there were 'no records on file'.

[77] There is no evidence that the City took any steps to publish or give notice of the **Agreement to Convey** or of the development restrictions which it now claims encumber the project lands.

[78] The **Agreement to Convey** states that the proposal was for 450 housing units, to be constructed in phases. The building permits issued pursuant to that Agreement between 1970 and 1973 were for 548 housing units plus other commercial units. There is no explanation as to why the City, over three years, approved construction and development of significantly more housing units than called for in the Agreement, if the **Agreement to Convey** was intended to constitute a restrictive 'development agreement'. It is not logical that an Agreement calling for 450 housing units, and upon which, with City approval and building permits, another 100 units were constructed, can be interpreted as intending to be a development restriction upon the future use, development or redevelopment, of the lands.

[79] The **Agreement to Convey** does not contain the terms, conditions and restrictions that the City now seeks to impose upon the lands (and, in particular, upon the Property). The Agreement contains no concrete or specific terms that one would expect to find in an enforceable contract. Even the unrecorded documents, filed by BDL with the City in furtherance of the project, do not appear to use language that is concrete and specific enough to constitute more than an 'agreement to agree'.

[80] For the purpose of establishing the reservation of the Property for use and development as an open recreation space in connection with the adjacent apartment towers, HRM relies upon a Landscape Plan (a schematic drawing) prepared by BDL in August 1973, a month after City Council's final formal approval (July 12, 1973) of the final phase of the Barrington Street Housing Project,.

[81] I have three problems with HRM reliance upon the landscape schematic drawing for that purpose:

1. It was only created after final approval by the City of the BDL development proposal. Said differently, there is no evidence that this Plan existed or was part of the development scheme approved by the City of Halifax before final approval of the last phase of the development proposal. Council's July 13, 1973, formal approval of Phase III was the last approval of the project.

2. The Landscape Plan was part of about 400 documents received by the City from BDL before and after the **Agreement to Convey** and the conveyances were executed. This drawing and the other documents were not recorded or filed in any public registry. There was no evidence as to where this Landscape Plan was kept, or whether the Planning and Development Department had knowledge of it before this litigation, or whether it was indexed or available upon request to any member of the public (including future owners) at any time before this litigation.

3. The Landscape Plan portrays the Property (originally Lots 3e and 3f) as a basketball court, a skating rink, a play area, a tennis area and an asphalt area. There is no evidence that the Property was developed in accordance with the Landscape Plan. There is some evidence that many years ago some playground equipment existed on the Property, but there is no evidence that it was ever developed as shown in the Landscape Plan. It is very clear that for most of the last 40 years the Property has been a vacant area and not maintained as an open recreational space (Gerald Bowden Affidavit).

[82] The City has never attempted to enforce the development and use of the Property as an open recreation space as shown in the Landscape Plan or otherwise. It is incongruous that HRM takes the position that the Property is restricted to use as open recreation space in accordance with a Landscape Plan created after the final approval of the final phase of the project, and not, at any time since 1970, seek to enforce the development and use of the Property in accordance with that Landscape Plan.

[83] Pe-Tse Keung is, and was when Causeway Bay 20 Co. Ltd. ("Causeway") owned the project lands, an executive officer of Causeway. Causeway purchased the lands from CHMC in 1998, after CMHC had foreclosed against Springwell Properties Limited, which corporation had purchased the lands from BDL in 1981. The conveyance from CMHC to Causeway was of the original nine (?) parcels. The lands consisted of the lots on which three large apartment buildings (called "Ocean Towers") are situated, and the two vacant lots that now constitute "the Property".

[84] Mr. Keung lived in Ocean Towers while Causeway refurbished the three towers. He testified that Causeway intended to develop the vacant Property.

[85] Causeway "inherited" from CMHC detailed architectural plans for a fourth apartment tower, intended to be constructed on the vacant Property. He contacted the Planning and Development Department for HRM to discuss the proposed development. He states that the lady staffer he consulted suggested that instead of building a fourth apartment tower, Causeway should consider building a hotel. She explained that the City was in great need of new hotel rooms and the Property would make a great location for a hotel. He states that their discussions included a suggestion by the City staffer that he look into acquiring an adjacent property to provide better access to the Property from Cornwallis Street.

[86] Mr. Keung acted on the suggestion and approached the owner of the neighbouring property (situate between Cornwallis Street and the Property). He prepared a budget for development of a hotel. He converted two floors of Tower 3 in Ocean Towers into suites, which he rented weekly to test the Halifax hotel market. In the end, Causeway was unable to purchase the adjacent property and did not go ahead with development of the Property. He was never aware of any development restriction respecting the project lands.

[87] I conclude that neither the authorization under s. 538A of the City Charter, nor the **Agreement to Convey,** created restrictions on the future development or use of the Property after completion of the terms of the agreement in 1973.

Estoppel - Polycorp's alternate claim

[88] Polycorp also claims that HRM is estopped from refusing a development permit because not only was there no public record or notice of any special development restrictions, but also because it asked and paid HRM for a zoning confirmation letter. This letter did not disclose the development restriction HRM now claims preserved the Property as open recreation space in connection with the adjacent apartments. In addition, HRM had thirty days to refuse to issue the permit. It did not refuse, or give a reason for refusing, until well beyond the statutory deadline.

[89] Paul Dunphy, the Director of Community Development for HRM, stated that a zoning confirmation letter cannot be accepted as a guarantee that no development restriction existed in respect of a property.

[90] I find that a zoning confirmation letter, issued by the Planning and Development Department, is intended to identify the zoning and development restrictions in respect of an identified parcel of land or building. I find that letters issued by the Planning and Development Department, indicate not only the zoning and applicable bylaw restrictions respecting use and development but also any record in their files indicative of a development agreement or site-specific restriction on the permissible or authorized legal use of a property.

[91] As a matter of practice, all development restrictions applicable to a property, about which an inquiry is made, that are in the files of HRM's Planning and Development Department, are identified in the zoning confirmation letter. Nothing in the zoning confirmation letter warns the person who requests and pays the City for the letter that it may not be accurate. It is reasonable that the recipient of the letter would assume that the letter is an accurate statement of the legal

permitted use of the property and of any legal restriction on the permitted use and development of the property.

[92] The evidence in this litigation establishes that, in zoning confirmation letters, HRM does identify development agreements and restrictions, in addition to the applicable bylaw provisions that affect the use and development of a parcel of land.

[93] In late 2008, Peter Polley, President and owner of Polycorp, made inquiries about the Property. In November, he arranged for a title searcher to search the public records. He asked her specifically about the existence of any survey plans, and of any development restrictions or agreements between the City and any prior owner. She confirmed the existence of Plan TT-14-19013, and that there were no development agreements or restrictions noted on the Parcel Register. He entered into an agreement with DDP-Brunswick Limited to purchase the Property on December 11, 2008. The agreement was subject to such further due diligence and investigations regarding the development potential (for constructing an apartment building on the Property) as Polycorp deemed necessary in its sole discretion.

[94] On February 13, 2009, Polycorp requested a zoning confirmation letter in respect of the Property. In response, HRM issued a zoning confirmation letter on February 16, 2009. The letter described the zone as the R3 zone; described a secondary plan to which it was subject and the view plane restrictions. With respect to the authorized (legal) use, it noted: "No records on file". HRM did not advise Polycorp that there was, as it now claims, a development agreement that restricted use and development of the Property to open recreation space.

[95] Peter Polley is an experienced developer in HRM. He was familiar with zoning confirmation letters. He relied on zoning confirmation letters to identify any unique or site-specific land use and development restrictions. He produced a letter respecting another of his developments, issued to his lawyer in 2010, which did identify that it was regulated by a development agreement, as I find was HRM's practice.

[96] In August 2005, the owner of TransGlobe, a corporation that agreed to purchase the project lands from Causeway, and then acquired the lands containing three apartment towers in the name of DDP Ocean Towers Limited, and the two vacant lots (consolidated into the Property) in the name DDP Brunswick Limited.

[97] TransGlobe requisitioned zoning confirmation letters in respect of the three buildings situate on the lands conveyed by Causeway to DDP Ocean Towers Limited. None of the zoning confirmation letters issued by HRM on September 12, 2005, identified that the buildings were subject to any agreements or development restrictions, or to the **Agreement to Convey** that HRM now says restricts development. In 2009 TransGlobe's lawyer again requisitioned a zoning confirmation letter in the course of legal work related to financing for DDP Ocean Towers Limited. The HRM letter issued September 18, 2009, did not disclose any development agreement or restrictions. Interestingly, on April 18, 2011, when DDP Ocean Towers Limited again sought a zoning confirmation letter in respect of refinancing, after this litigation was well under way, the zoning confirmation letter did declare that the DDP Ocean Towers property to be subject to a development approval of Council dated February 25, 1971, related to the Barrington Street Housing Project.

[98] I conclude that only because someone with HRM made special inquiries after receipt of Polycorp's application for development permit in November 2009 that HRM looked into the possibility that development restrictions might exist, searched for evidence of them, obtained the documents produced in this litigation from an unknown source, and eventually took the position that the **Agreement to Convey** was a development agreement that restricted the use and development of the Property to open recreation space in connection with the three Ocean Towers apartment towers.

[99] I find that Polycorp did rely on the representation of HRM, contained in the February 16, 2009, zoning confirmation letter with respect to the existence of any development restrictions specific to the Property in its decision to close the purchase of the Property from DDP Brunswick. It acted reasonably in doing so.

[100] I find that neither the notations on Plan TT-14-19013 filed at the registry, nor the Deeds of Conveyance, provided, nor would reasonable have provided, notice to Polycorp, or any person searching the registry records, of development restrictions affecting the Property.

[101] In support of the estoppel claim, Polycorp cites *Ford v Kennie*, 2002 NSCA 140, *Harwood Industries Ltd. v. Surrey (District),* 1991 CarswellBC 249 (BCSC), and *Smith's Field Manor Development Ltd. V. Halifax*, 1988 CarswellNS 67 (NSCA).

[102] HRM responds that: (1) "estoppel cannot operate to effect statutory powers or obligations", citing, from *Crossroads Community Council v. Vanbeek* [1987] PEIJ No.9 (PEISC), a passage from Rogers' *The Law of Canadian Municipal Corporations* at pp.376-377, and (2), the s.538A authorization and City Council approvals bind HRM to act in accordance with the **Agreement to Convey** conditions until HRM Council discharges them, pursuant to s. 229 of the *Municipal Government Act* and s. 244(1) *HRM Charter* – otherwise HRM would be acting *ultra vires*.

[103] For the law of estoppel, I rely on my prior analysis in *Kings (County) v. Berwick (Town)*, 2010 NSSC 128, paras 54-60, especially para 60:

> [60] The proper approach to the estoppel issue is that explained by Chiasson, J.A. for the British Columbia Court of Appeal in *Dunn* v. *Vicars*. He adopts the broad approach consistent with the English case law, primarily enunciated by Lord Denning. Lord Denning=s conclusion in *Amalgamated Investment* v. *Texas Commerce* at p. 584 is the modern law of equitable estoppel. He wrote:
>
> > The doctrine of estoppel is one of the most flexible and useful in the armoury of the law. ... It has evolved during the last 150 years in a sequence of separate developments: proprietary estoppel, estoppel by representation of fact, estoppel by acquiescence and promissory estoppel. At the same time it has been sought to be limited by a series of maxims: ... All these can now be seen to merge into one general principle shorn of limitations. When the parties to a transaction proceed on the basis of an underlying

> assumption (either of fact or of law, and whether due to misrepresentation or mistake, makes no difference), on which they have conducted the dealings between them, neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the court will give the other such remedy as the equity of the case demands.

[104] Because I disagree with HRM's interpretation of s. 538A *City Charter* and the **Agreement to Convey**, I disagree with its position that it is bound to enforce the **Agreement to Convey's** "conditions" respecting the use of the project lands.

[105] Moreover, s. 538A ceased to exist in 1995 when the *City Charter* was revoked and replaced with the *HRM Charter*. Under the latter, a development agreement did not come into effect until it was filed by the Municipality in the registry (s. 243(3)(c) of the *HRM Charter* and s. 228(3)(c) *MGA*). There was and is no 'effective' agreement affecting the Property to discharge or amend.

[106] The passage from Rogers' text, cited in *Crossroads*, states that the case law appears to show that the doctrine of estoppel does not apply where the action relates to a Council's exercise of its legislative capacity, "but where the act is administrative it may apply". In this case, the acts of issuing a zoning confirmation letter, and filing the purported development agreement, were both administrative acts.

[107] If I am wrong in my finding that the **Agreement to Convey** did not constitute a development restriction on the project lands (including the Property) and future owners, but was discharged upon completion of construction, I would have estopped HRM from refusing to issue a development agreement to Polycorp by reason of the **Agreement to Convey**, and associated authorizations and documents.

Part IV: HRM's Application (Second Application)

[108] HRM's application raises two issues: whether the consolidation of the two lots to create the Property pursuant to s. 268A *MGA* was void, and whether the newly-created parcel descriptions of the consolidated lots should corrected to reinsert two omitted references.

[109] The Property is a consolidation of lots formerly described as: Lots 3(e) and 3(f) on Plan TT-14-19013, and Lots 6 and 2 respectively in the 1998 conveyance by CMHC to Causeway. The consolidation was carried out as a deemed consolidation under s. 268A *MGA*, the so-called *de facto* consolidation provision.

[110] Causeway consolidated the lots in 2005 as one of the conditions of the sale of their entire holdings to TransGlobe. At the same time, the remaining six lots, upon which the three apartment towers were located, were also consolidated under s. 268A into a single lot. The consolidations were registered at the deeds registry pursuant to the *Registry Act*. Both

consolidated lots were then migrated to the *LRA* registry with new legal descriptions pursuant to the *Land Registration Act*.

[111] A condition to a deemed consolidation pursuant to s. 268A, is that the lots being consolidated be and have been in common ownership and used together since April 15, 1987, and that the owner register a statutory declaration so stating, "and including the facts that support the statement."

[112] HRM submits that all eight lots comprising the project lands were used together and could only be consolidated into one lot, that the statutory declaration supporting the consolidation contained no facts supporting that the lots were used together since April15, 1987, and that the discovery of the affiant establishes that he did not know the truth of what he affirmed in the statutory declaration.

[113] When the two consolidated lots were migrated, the parcel descriptions were changed. Within a few days, the Property was conveyed to DDP Brunswick Limited and the other consolidated lot was conveyed to DDP Ocean Towers Limited.

[114] HRM refers to s. 34 *LRA* as the basis for its application to the Court. In its written briefs and oral argument, it acknowledges that s. 35 *LRA* is the basis for its application to this court. While HRM seeks to "correct" the parcel descriptions in the registry to give effective notice of the "s. 538A Agreement as a burden or as a textual qualification on the permitted uses of the properties in question", counsel for HRM concedes that the registry may only be corrected to reflect registered interests. Since the only registered interests are those already recorded under the *Registry Act*, HRM seeks to add to the description two phrases contained in the pre-consolidation description of the lands.

[115] The relevant portions of the before and after parcel descriptions of the Property read:

Before Consolidation

> ALL that certain lot, piece or parcel of land situate, lying and being on the southwestern side of Barrington Street between Cornwallis Street and Gerrish Street in the City of Halifax as shown on a plan entitled "Schedule "A" Project Area", dated February 1971, revised February 10, 1971, and being on the file in the Office of the City Engineer for the City of Halifax, Duke Street Tower, Scotia Square as Plan No. TT-14-19013; the said land being more particular described as follows:

After Consolidation

> All those certain parcels of land situated on the southwestern boundary of Barrington Street in Halifax, Province of Nova Scotia shown as PID 148429 and PID 344929 on a plan (Servant, Dunbrack, McKenzie & MacDonald Ltd. Plan No. 12-1082-A) of Survey of Block CMHC-1, Lands conveyed to Canada Mortgage and Housing Corporation, signed by Terance R. Doogue, N.S.L.S., dated October 21, 1996, revised May 12, 1998 and being more particularly described as follows:

> . . .
>
> THE above referred to PID 148429 shown as Phase-3e on City of Halifax Plan No. TT-14-19013 dated February 1971, a portion of lands conveyed to Barrington Developments Limited by Indenture recorded at the Registry of Deeds for the County of Halifax 2726, Page 826 and PID 344929 shown as Phase-3f on City of Halifax Plan No. TT-14-19013 dated February 1971, a portion of lands conveyed to Barrington Developments Limited by Indenture recorded at the Registry of Deeds for the County of Halifax in Book 2726, Page 831.

[116] HRM notes that the consolidated description removes the reference to the "Project Area", and the location of Plan No. TT-14-19013 at the "City Engineer's Office". It asserts that the reworded description make it more difficult for title searchers "to ascertain that a previous project agreement existed on these properties."

[117] The Respondents make three points:

1. HRM has no standing to bring the Second Application;

2. A 2005 statutory declaration conforms to s. 268A, but if it does not, the Court has discretion to confirm the consolidation and should do so, on the basis of the evidence of common use presented in this hearing; and,

3. The new parcel description does not omit any relevant information and should not be corrected.

First Issue: ***HRM's Standing***

[118] To have standing under s. 35 of the *LRA* to seek correction of a registration in a parcel register, a person must be aggrieved by the registration. Section 35(1) reads: "A person who objects to and is aggrieved by a registration in a parcel register may commence a proceeding before the court requesting a declaration as to the rights of the parties, an order for correction of the registration and a determination of entitlement to compensation, if any."

[119] The term "aggrieved" is not defined in the *LRA*. In *BC Development Corporation v British Columbia (Ombudsman)*, [1984] 2 SCR 447, Dickson J. (as he then was) defined that term specifically in the context of the particular legislation and the purpose of that legislation (*Ombudsman Act*). In that *Act*, the words used were "aggrieves or may aggrieve a person". At paragraph 68, he wrote:

> I would hold a party is aggrieved or may be aggrieved whenever he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interest, whether or not a legal right is called into question.

[120] HRM makes the point that in *BC Development Corporation*, the Supreme Court rejected reliance upon authority, and instead directed itself to careful consider the words used in the particular legislation in the context of the purposes of the legislation.

[121] HRM notes that the purpose of *LRA* includes providing certainty in ownership of interests in land (s. 2(a)). HRM says it objects to and is aggrieved by the consolidation and migration "because it involves the use of property that HRM itself expropriated and then offered up for redevelopment".

[122] HRM argues that its involvement in the expropriation and redevelopment of the project lands (in the late 60s and early 70s) distinguishes its situation from the group of hotel owners trying to stop development of a competing hotel in *Re Halifax City Charter*, 1978 CarswellNS 74 (NSCA).

[123] HRM compares itself with the Attorney General in *AG Gambia v N'Jie*, [1961] 2 AER 504 (PC) where the applicant Attorney General was given standing because of his responsibility to protect the public interest.

[124] Counsel for the intervenor notes that in *AG Gambia*, a case about professional misconduct, the AG appeared to be responsible for prosecuting professional misconduct. While Lord Denning had a "liberal view" of what an aggrieved person was, he stated at pp. 7 and 8 of that decision that aggrieved persons "do not include a mere busybody who is interfering in things which do not concern him; but do include a person who has a genuine grievance because an order has been made which prejudicially affect his interests".

[125] Responding to other decisions cited by HRM, counsel for the intervenor argues that the sum of all those decisions is that there must be an invasion of the legal or pecuniary rights of the applicant.

[126] The Registrar General of Land Titles asserts that the only interests affected by the parcel registry, for the purposes of an s. 35 application, are registrable interests, which are defined in s. 17 of *LRA*. The development restrictions or encumbrances that HRM seeks to have recognized in the parcel register are not registrable interests.

[127] The Registrar General further submits that the "omissions" referred to be HRM are not registrable interests under the *LRA* and therefore not subject to an application under s. 35.

[128] In oral argument, counsel for HRM appeared to concede that if the Court held that the **Agreement to Convey** did not constitute a restrictive "development agreement" enforceable against the lands and future owners, that it was not an aggrieved party. In the first application, I decided that the **Agreement to Convey**, authorized by s. 538A of the *City Charter* did not constitute an enforceable restriction or burden against the lands and future owners.

[129] In my view, the history of the interpretation of the word "aggrieved" in the planning context in Nova Scotia demonstrates, at a minimum, that an aggrieved person must suffer some legal prejudice to have standing as an applicant. Absent a legally enforceable restriction, burden or encumbrance respecting the Property, HRM has no standing to challenge either the consolidation made pursuant to *MGA* s. 268A or the parcel description registered at the time of migration.

[130] HRM's assertion that its expropriation and development of the project lands forty years ago gives it standing as an aggrieved party has no merit. HRM's legal interest in the Project

Lands, including the Property, terminated in 1973 when BDL completed the terms of the **Agreement to Convey.**

[131] Counsel for HRM argued that because subdivisions, and therefore consolidations, are matters under the jurisdiction of municipal governments and their planning departments, and the Property was created by a consolidation, HRM has an interest (subdivision approval) that is prejudicially affected by an illegal consolidation, so as to be an aggrieved party.

[132] I agree that subdivision approval, which includes consolidations, is, by legislation, within the jurisdiction of municipal planning and development authorities. However, the same legislation that gives municipalities jurisdiction over subdivision approval provides in clear language an exception to municipal jurisdiction – s. 268A. A *de facto* consolidation made pursuant to s. 268A does not, by statute, involve municipal jurisdiction; therefore, there is no prejudice to the interests which HRM has in respect of its statutory participation in the approval of all other subdivisions (and consolidations).

[133] Dickson J.'s approach to determining the meaning of aggrieved in the context of the particular statute and its purposes was adopted by the Nova Scotia Court of Appeal in *K(R) v. P(HS),* 2009 NSCA 2. The change from the use of the term "interested person" to "aggrieved person" in planning legislation in Nova Scotia was analyzed in detail by E. Anne Bastedo and A. Wayne MacKay in *Citizen Access to Nova Scotia Planning Appeals: from Interested to Aggrieved Persons*, (1987) 23 AdminLR 246. These sources support the respondents' submission.

[134] In short, HRM is in no different a position than the hotel owners in *Re Halifax City Charter* or the residents associations in the *Riverlake Residents' Assn v. Halifax, 1985 CarswellNS 138 (NSMB)* or *Re Northwest Arm Heritage Assn* (1986) 23 AdminLR 20. HRM has no standing to bring this application.

Whether the Causeway's 2005 Consolidation of the Property is Void

[135] If I am wrong, and HRM has standing, I would have confirmed the registration pursuant to s. 35(4)(c) *LRA*. Section 268A *MGA* reads as follows:

> 268A (1) Two or more lots that are and have been in common ownership and used together since April 15, 1987, or earlier are deemed to be consolidated if the owner or the owner's agent registers a statutory declaration in the appropriate registry or deeds or records a statutory declaration in the land registration office stating that the lots were in common ownership and used together on or before April 15, 1987, and have continued to be so owned and used, and including the facts that support the statement, the present descriptions of the lots including any property identifiers assigned by Service Nova Scotia and Municipal Relations and the description of the consolidated single lot.
>
> (2) Registration or recording of the statutory declaration referred to in subsection (1) is deemed to consolidate the lots as of the date of registration or recording.

(3) Subdivision approval of the consolidation is not required.

[136] HRM submits that the *de facto* consolidation is void because the evidence shows that all eight lots conveyed to BDL were used in common (therefore any consolidation had to involve a consolidation of all eight lots into one) and because the statutory declaration filed in support of the consolidation by Mr. Lin Keung does not meet the requirements of s. 268A in two respects:

1. There are insufficient facts given in the statutory declaration to support the statement of common use; and,

2. the characterization of the two consolidated parcels as being used together, in isolation from the other six lots which formed part of the former Barrington Street Housing Project, is inaccurate.

[137] Section 268A applies to "two or more lots" that "are and have been in common ownership and used together since April 15, 1987". A *de facto* consolidation is affected upon registration of a statutory declaration by the owner or owner's agent, which contains the following:

a) a statement that the lots were in common ownership and used together on or before April 15, 1987, and have continued to be so owned and used;

b) facts in support of the statement of common ownership and that they were 'used together' on or before April 15, 1987, and that both have continued since 1987; and,

c) the present description of the lots, including any property identifiers assigned by Service Nova Scotia and Municipal Relations, and the description of the consolidated single lot.

[138] At the opening of the hearing, the respondents challenged the admissibility of the opinion evidence and report of Ian H. MacLean, a lawyer authorized to practice law in Nova Scotia, and whose practice is concentrated on real property law. I granted the motion and excluded his opinion evidence in an oral decision because, effectively, Mr. MacLean's opinion constituted an interpretation of s. 268A and I did not need his opinion to understand and interpret s. 268A, and whether the *de facto* consolidation effected by Ms. Bailey for Causeway complied with s. 268A.

[139] At the same time, HRM challenged the admissibility of the opinion evidence and report of Catherine S. Walker, Q.C., also a lawyer authorized to practice law in Nova Scotia and whose practice is concentrated in real property law. Her report and evidence addressed the standard of practice for lawyers carrying out *de facto* consolidations. In an oral decision at the end of the *voir dire*, I expressed reservations about the admissibility of her opinion and report but did not exclude it.

[140] Section 268A clearly provides that where two or more lots have been in common ownership and used together since April 15, 1987, and the owner (or his agent) registers a statutory declaration stating both that the lots were in common ownership and used together since April 15, 1987, and have continued to be so owned and used since then "and including the facts that support the statement", the lots are deemed to have been consolidated.

[141] HRM correctly asserts that the statutory declaration sworn by Mr. Keung and filed with the Registry for the purposes of the *de facto* consolidation contains a bald statement that the two lots that were to be consolidated and become the Property remained in common ownership since they were conveyed to BDL on November 19, 1973, and were used in common since April 15, 1987. Lin Keung's complete statement on use reads: "During the time the Company [Causeway] has owned the Parcels, they have been used in common and, based on my knowledge of the history of the Parcels, I do verily believe that the common use of the Parcels began prior to April 15, 1987." The statutory declaration includes no facts that support that statement.

[142] As previously noted, there is only one principle or approach to the interpretation of statutes: The words of the *Act* are to be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the *Act*, the object of the *Act* and the intention of parliament. The analysis usually involves posing and answering three questions: What is the meaning of the text? What did the legislature intend? What are the consequences of adopting a proposed interpretation?

[143] Section 268A, read in its grammatical and ordinary sense, clearly requires not only a statement in the statutory declaration that the lots are and have been common ownership and used together since April 15, 1987, but also the facts that support the statement.

[144] Section 268A came into effect as a 2003 amendment to the *MGA*. The sole explanatory note filed with the Bill that included the amendment was that the section "provides for the deemed consolidation of long-standing lots." As Ms. Walker's report notes, all parcels of land must either have formal subdivision approval from a municipality, or be exempt from the requirement for approval. A *de facto* consolidation is a statutory exemption from subdivision approval.

[145] The purpose of the s. 268A exemption appears to be to provide an exemption from the normal criteria that must be met before municipal subdivision approval can be obtained. The exemption is only available for lots that were owned and used together before April 15, 1987. Because there is no approval process for deemed subdivisions, and the Registrar General does not 'police' the registration of deemed consolidations, it makes sense that the statutory declaration contain, not simply a statement that the lots were in common ownership and used together but the facts upon which the exemption from subdivision approval is obtained.

[146] In answering the question of what the legislature intended, which requires a review of the *Act* as a whole, the Court notes that subdivision of lands, including consolidation, is a matter that by the *MGA* is the responsibility of municipality. Municipal planning is an attempt to bring reason to decision-making respecting the complexities of the physical development of municipalities. It is an important component of the municipal planning, and has a significant impact upon not just the regulation of land use, but on the policies and economics of a municipality's physical infrastructure: transportation, schools, sewer and water, to name but a few. This observation respecting the relevance, importance and purpose of municipal planning is described in the Rogers and Makuch texts cited in this decision. Section 268A is an exception to the otherwise required supervision and control that the *MGA* and provincial planning legislation assigns to municipalities, including HRM.

[147] It would be inconsistent with the scheme and purposes of the *MGA* to permit subdivisions or consolidations that are exempt from municipal planning and development controls, and which had significant implications as well as consequences on municipalities, unless the entitlement to the exemption is strictly complied with.

[148] The statutory declaration prepared by Ms. Bailey and sworn by Mr. Keung appears to have been prepared from a precedent used by Ms. Bailey's law firm. The precedent form contains no paragraph whereby the affiant would set out the facts that support the statement that the lots are and have been used together since April 15, 1987. Ms. Bailey says that it was not her practice to include facts supporting the statement of common usage.

[149] This practice, and the precedent for the statutory declaration, appears to have been the work of Ms. Walker. She apparently gave advice to Nova Scotia lawyers about the land registration system and the new deemed consolidation exemption. Her advice is reflected in a written paper prepared for an education program, entitled: *Certifying Title and Qualifying Title under the Land registration Act*, to which is attached the precedent statutory declaration for *de facto* consolidations, followed by Ms. Bailey.

[150] The grammatical and ordinary meaning of the words in s. 268A clearly require that the affiant state both that the lots are and have been owned in common and are and have been used together since April 15, 1987, and set out the facts that support the statement.

[151] Clearly the affidavit in this case set out no facts that support the statement that the two lots are and have been used together since April 15, 1987.

[152] Despite the vigorous submissions of the respondents and intervenor, I do not accept that a standard of practice can overcome and take precedence over the clear meaning of the words in s. 268A, which requires that (1) the lands be used together, (2) a statutory declaration confirming that the lots deemed to be consolidated were used together since April 15, 1987, and (3) facts in the statutory declaration that support the statements.

[153] Not all commonly owned lands, whether adjacent or not, are used in common. Ms. Walker suggested that there is a presumption that if two or more lots have been in common ownership that they have been used together. For this presumption she cites *Cunard v. Irvine* (1853-55) 2 NSR 31 (SC *in banco*), relied upon by Fichaud J.A. in *Nova Scotia v. Brill*, 2010 NSCA 69 at para. 130 for another precept. The presumption that the legal owner (holder of the paper title) of a lot has possession of the lot does not assist the respondents on this issue. It is not relevant. The required facts to satisfy s. 268A relate to the use of two or more lots together, not separately. Based on the evidence in this proceeding, the presumption of use together is without foundation in the case law or texts. Section 268A clearly requires that the facts that support the statement be contained in the statutory declaration. This makes sense. An owner of adjacent lots (and possibly lots that are not adjacent) may or may not use the lots together. Each case depends on its particular factual matrix.

[154] I disagree with HRM's submission that if all eight lots conveyed to Causeway were used together, that s. 268A requires that a *de facto* consolidation include all eight lots. There is nothing explicit or implicit in the wording of s. 268A that if several lots were used together, they

must be consolidated into one lot if they are to be consolidated. I agree that the deemed consolidation in s. 268A is an exemption to the normal scheme of the *MGA* for subdivision and consolidation of land and should be strictly complied with.

[155] There were other problems with Mr. Keung's affidavit. It is apparent, at least on a balance of probabilities, from all of the evidence before the Court, that Mr. Keung did not have any facts that would support a statement that the two lots which constitute the Property are and had been in common ownership and used together since April 15, 1987.

[156] My conclusion that the statutory declaration filed by Causeway for the purposes of the consolidation of the Property did not conform to s. 268A, and that the practice amongst the property bar cannot take precedence over the clear meaning of the legislation, does not end the analysis.

[157] Section 35(4)(c) provides that courts shall determine the rights of the parties according to law and subject to the principle that the court may, where it is just and equitable to do so, confirm the registration. Section 35(6) directs the court to consider, when it is determining whether it is just and equitable to confirm the registration, five enumerated factors, and any other circumstances that are relevant. The list of factors is inclusive and not exhaustive.

[158] I agree with counsels' submissions that the factors dealing with whether compensation in lieu of an interest is available are not relevant. In this case, the first three factors are the most relevant.

[159] The most important factor was the first (s. 35(6)(a)) – "the nature of the ownership and the use of the parcel by the parties". While Mr. Keung did not have knowledge of the facts to support a declaration that the two lots had been used in common since April 15, 1987, the intervenor tendered the affidavit of Gerald Bowden. Mr. Bowden was not cross-examined. His affidavit clearly establishes that the two lots that constitute the Property have in fact been used in common since April 15, 1987. Other evidence established that the two lots had been in common ownership.

[160] If the contents of Mr. Bowden's affidavit had formed part of the statutory declaration filed at the Registry at the time of the *de facto* consolidation, I am satisfied that it would have satisfied the requirements of s. 268A and supported the common use of the lots since April 15, 1987.

[161] In effect, the failure of Causeway to comply with s. 268A at the time of consolidation is technical. The Property has been in common ownership and was, and it continues to be, used together since April 15, 1987. This factor favours confirming the registration.

[162] The second relevant consideration is s. 35(6)(b). I am satisfied from the affidavit and cross-examination of Ms. Bailey that she was following the practice of the Bar at that time with respect to *de facto* consolidations. Her intent was not to avoid or contravene s. 268A. She acted with reasonable care and in good faith. This is a fact that supports confirmation of the registration.

[163] The third factor enumerated in s. 35(6) deals with the special characteristics of the parcel and their significance to the parties. The evidence is clear that the Property complies with the R3 Zone requirements of HRM's present *LUB*. But for any site specific development restrictions (of which I found none), the Property's characteristics are such that the owner is entitled to a development permit on the basis of compliance of the present land use bylaw. This factor supports confirmation of registration.

Whether HRM is entitled to correction of the parcel registry

[164] If I am wrong and HRM has standing, I would dismiss HRM's application to direct the Registrar General to correct the parcel registration as requested by HRM for several reasons.

[165] First, neither requested revision would accomplish what the HRM seeks: to give persons who searched the Registry effective notice of the s. 538A Agreement and restrictions that it claimed existed with respected to the permitted usage of the project lands. Not only does the **Agreement to Convey** contain no restrictions, but the addition of the requested words ("Project Area") and the fact that Plan TT-14-19013 is not only on file at the Registry Office but also on file at the Office of the City Engineer (which office no longer exists) would not give effective notice of the Agreement or of any restrictions.

[166] Second, when combined with the fact that the documents that are referred to in the post-consolidated description are on file at the Registry, the post-consolidated description gives as much information about the **Agreement to Convey** as the before-consolidation description.

[167] Third, the real request of HRM is to put enough information on the record so that it can argue that the Registry Office contains notice of development restrictions and therefore complies with planning legislation that preconditions the effectiveness of development agreements with registration at the registry. The reality is that none of the words that HRM seeks to have added back into the parcel description would constitute compliance with the planning legislation referred to earlier in this decision or to effectively give notice of development restrictions.

[168] Anything short of the recording of the Agreement itself would not make any restrictions (if they existed) effective against the Property and future owners of the Property. It is too late for HRM to now seek to have put on the public registry a document with a retroactive effect.

[169] If HRM had standing, I would decline to direct the Registrar General to "correct" the partial registration.

Part V: Costs

First Application

[170] The starting point for analysis of costs is *CPR 77*. Because courts have general discretion to award costs that are fair, precedents, case law and texts often give helpful guidance.

[171] In this case, the parties to the first application are Polycorp and HRM. The Province (Registrar General of Land Titles) successfully applied to be an Intervenor. Usually interveners get no costs and pay no costs. The Province seeks no costs with respect of its intervention in the first application.

[172] Polycorp was successful in the first application. There is no reason to deviate from the general rule, incorporated in *CPR 77.03(3)*, that the costs of a proceeding follow the results. This proceeding started as an Application in Chambers. HRM moved to convert it to an Action and the parties compromised by converting it to an Application in Court.

[173] *CPR 77.06(2)* provides that party-and-party costs must (unless the judge otherwise orders) be assessed in accordance with *Tariff A*, as if the hearing was a trial.

[174] Polycorp seeks party-and-party costs pursuant to *Tariff A*. They submit that the Court should impute, for the purposes of calculating costs, the "amount involved" as a figure at least equal to the amount they paid for the property ($1,275,000).

[175] HRM disputes Polycorp's position as to the amount involved but provides no alternative calculation. It simply submits that costs are in the discretion of the Court and should be significantly less than claimed by Polycorp.

[176] The starting point of the analysis under *Tariff A* is to determine the "amount involved". Sometimes there is no apparent "amount involved" and the Court is required to apply other considerations such as those enumerated in *Tariff C* related to the complexity of the matter, the importance of the matter to the parties and the amount of effort involved.

[177] In this case, I agree with Polycorp that the amount involved is easily determined to be not less than $1,275,000, the purchase price for the Property. Quite possibly, with other related costs, expenses and lost opportunities, the amount involved could be higher. My basis for accepting Polycorp's "amount involved" is that if the City had succeeded, either in its defence of the first application or its prosecution of the second application and the Property was restricted to use as "open recreation space" it would likely have had no value to Polycorp.

[178] The *Tariff A* calculation for costs based on $1,275,000 is $82,875 (6.5% of the amount involved), plus $2,000 per day of trial. In this case, the hearing lasted three days. The total *Tariff A* costs are $88,875 plus HST and disbursements.

[179] Because the first and second applications were dealt with together, this award incorporates Polycorp's entitlement to costs under the second application. No additional amount should be awarded.

[180] Determining the *Tariff A* amount involves an exercise of discretion. Should I deviate from the "table amount" calculated under *Tariff A*? For this purpose, I consider the three factors enumerated under *Tariff C* as helpful guidance.

[181] With respect to complexity, in my view the issue advanced by Polycorp in the first application was not complex; however, the machinations of HRM in defending the first application and the issues raised by it in the first and second applications unnecessarily

complicated the entire proceedings. What might have been a basis to reduce the formula amount disappeared with the second application and the issues that were raised by HRM.

[182] With regards to the importance of the matters to the parties, I conclude that if HRM had succeeded in establishing that the use of the property was restricted to open recreation space, it would have had a very significant financial consequence to Polycorp. This application was not simply a procedural or interlocutory proceeding; it was a final determination of the Property's value.

[183] With respect to the amount of effort involved, as noted above, HRM complicated what would have otherwise have been a simple issue.

[184] What likely would have been a Chambers application with few disputed facts, focussed on the application of the law to those facts, became a delayed, time-consuming and expensive process. This caused a one-day hearing in June 2010 to become a three-day hearing in May 2011.

[185] The additional processes which arose by HRM's joining of four additional parties and additional issues, resulted in eight discoveries, five in Halifax and three in Toronto and additional sets of counsel for five parties plus an intervenor (who was discovered). The additional expense reflects the additional parties, issues, discoveries and steps.

[186] There is no basis to reduce the amount of party-and-party costs calculated in *Tariff A*. I award party-and-party costs to Polycorp payable by HRM in the amount of $88,875 plus HST and other disbursements.

Second Application

[187] Part of HRM's defence to Polycorp's application was to challenge the legal status of the property as registered in the registry. It was this application that greatly expanded the issues; the number of parties and the extent of the preliminary procedures. HRM was unsuccessful in its application.

[188] The remaining co-respondents, excluding Polycorp, were the Registry General of Land Titles, Causeway, DDP Brunswick and DDP Ocean Towers, as well as the Intervenor, Ruth Bailey, who was discovered and was central to HRM's claims. These respondents were successful.

[189] The Intervenor seeks no costs. The remaining respondents were forced into ligation in September 2010 and had no choice but to participate in the extensive and expensive pre-trial processes. Their involvement in the hearing itself was secondary to the contest between Polycorp and HRM.

[190] *CPR 77* applies to the claim for costs of Causeway, the two DDP corporations, and the Registrar General (Land Titles).

[191] It would be artificial speculation to attempt to place an "amount involved" for the purpose of assessing their claim for costs. In my view, the fairest way to assess their entitlement

to cost for their forced participation is to analyze the same factors that are relevant to claims made under *Tariff C*; that is the complexity of the matter, the importance of the matter to the parties and the amount of effort involved.

Causeway

[192] Counsel for Causeway sought costs on the basis of *Tariff C* at the rate of $2,000 per day times 2-and-a-half days (he left early) times a multiplier of four for a total of $20,000 plus disbursements.

[193] As noted earlier, *Tariff C* is not the appropriate table but absent an "amount involved" the factors enumerated in *Tariff C* are an appropriate yardstick.

[194] On the issue of complexity, there is nothing unusual with respect to Causeway's involvement.

[195] With respect to the importance of the issue to Causeway, theoretically, HRM's claim that the consolidation was void may have meant that Causeway's conveyances to DDP Brunswick and DDP Brunswick's conveyance to Polycorp were void, and that Causeway, by default, was still the owner of the property. This would have caused interesting but likely troublesome and expensive problems, and claims for damages.

[196] With respect to the amount of effort involved, Causeway was forced to participate in several discoveries. Two of its principals were discovered in Toronto. One was crossexamined by HRM at the hearing. At the hearing itself, counsel acknowledged that he basically piggy-backed on the submissions of Polycorp, the Registrar General and the Intervenor.

[197] Based on these factors, I agree that Causeway's request for $20,000 plus HST and costs is reasonable.

DDP Brunswick and DDP Ocean Tower

[198] DDP Brunswick and DDP Ocean Tower are related parties and were represented by one counsel. Their involvement in these proceedings was very similar to that of Causeway. The principal of the companies, Mr. Drimmer, was discovered in Toronto. Their counsel was forced to participate in the pretrial processes.

[199] Based on HRM's pleadings, and the potential voiding of all conveyances after the consolidation, their participation in all of these proceedings between September 2010 and May 2011 was reasonable and necessary. At the hearing itself, they too basically piggy-backed on the submissions of Polycorp, the Registrar General and the Intervenor.

[200] Counsel for DDP sought $30,000 plus HST and disbursements. Because my analysis of their involvement is similar to that of Causeway, I see no reason to deviate from an assessment of party-and-party costs in favour of the DDP corporations. I award them party and party costs in the amount of $20,000 plus HST and other disbursements.

Registrar General

[201] The Registrar General seeks costs as a respondent in the Second Application.

[202] An official of the Registrar General Land Titles was discovered, and cross-examined by HRM at the hearing. Counsel was forced to participate in the same extensive pretrial processes as the other respondents.

[203] HRM's allegations in the Second Application were substantially focused on the alleged failings of the Registrar General in 'policing' the consolidation and migration. Consequently, the Registrar General made more substantial submissions with regards to the merits of HRM's application than were made by the other respondents (other than Polycorp and the Intervenor).

[204] No "amount involved" can reasonably be assigned to their role in this proceeding. I assess party-and-party costs to the Registrar General, who participated in the full hearing, in the amount of $20,000 plus disbursements.

Conclusion on costs

[205] All of these costs awards are payable forthwith. All disbursements are to be reasonable disbursements and verified by affidavit as being actually incurred and in relation to these two applications.

Part VI: Conclusion

[206] In the First Application, the Court declares that the Applicant's development rights with respect to the Property are not affected by any purported development agreements, site plans or authorizations made by HRM pursuant to s. 538A of the former *Halifax City Charter*. Any decision respecting a development permit application in respect of the Property shall be solely governed by the terms of the *Land Use Bylaw*.

[207] HRM's Second Application is dismissed on the basis that HRM has no standing to bring the application. If I am wrong, I would have dismissed it on the basis set out in this decision.

[208] Costs are awarded to the successful parties in accordance with the terms of this decision.

J